IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4314 OF 2001

Union of India, through
The General Manager, Western Railway,
Churchgate, Mumbai. ...Petitioner.
Vs.
Smt. Laxmibai Narayan Patkar. ...Respondent.
....
Mr. Suresh Kumar for the Petitioner.
Mr.S. P. Inamdar for the Respondent.
.....
CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

March 23, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.):

Rule, by consent returnable forthwith. Learned Counsel for the Respondent waives service. With the consent of Counsel and at their request, taken up for final disposal.

2. The Union of India introduced a scheme for the grant of ex-gratia payment to families of deceased CPF retirees on 13th June 1988. The Respondent is a widow of Narayan Ramchandra Patkar who joined the service of the railways on 17th January 1941. He resigned from service on 16th August 1978 at which point of time, he was engaged as Chargeman-B in the Carriage Repair

Workshop. The aforesaid employee was a subscriber to the State Railway PF (SRPF) (Account No.79947) and expired on 17th January 1996. The Respondent filed an application seeking ex-gratia payment from the date on which her husband expired, but her application came to be rejected on 19th February 1998, on the ground that the employee in this case has resigned from service and that he had not retired, this being a condition of eligibility.

3. The Respondent moved the Central Administrative Tribunal, and in reply to the application, it was contended by the Petitioner that the Respondent was not entitled to ex-gratia payment in terms of the order of the Railway Board order dated 27th December 1988 since her husband had resigned from service and had not retired in the normal course. While allowing the Original Application, by its order dated 1st June 2000 which is impugned in these proceedings, the Tribunal has relied upon its own judgment in **Smt.Sumati Pandurang Padave vs. Union of India** (O.A. 671 of 1999 decided on 4th May 2000). The Tribunal noted that "the basic issue in this OA was the same as in the present OA." The resignation in the previous case having been treated as voluntary retirement, relief was accordingly granted to

the Respondent relying upon the decision in the earlier case.

4. At the hearing of these proceedings, the attention of the Court has been drawn to the fact that the decision of the Tribunal in **Sumati Padave's** case (supra) was reversed by a Division Bench of this Court on 9th July 2004 in Writ Petition 4113 of 2002 (**Union of India vs. Smt. Sumati Pandurang Padave**) and suo motu Writ Petition 16 of 1992 (**Smt.Sumati Pandurang Padave vs. The Works Manager, Western Railway Workshop & Ors.**). The Division Bench while construing the relevant circulars in this regard and following the judgment of the Supreme Court in **Reserve Bank of India vs. Cecil Dennis Solomon,** 2004 (1) S.C. Services Law Judgment 532, held that there was a distinction in service jurisprudence between the concepts of 'retirement' and 'resignation' and came to the conclusion thus:

> "From the above discussion, what emerges is that the pension rules itself places the resignee and retiree differently. In the case of resignation, services stand forfeited. If the services stand forfeited, the employee will not be entitled to pension as he would not be completing the requisite number of years for grant of pensionary benefits. Apart from that, the benefit given by the O.M. of 13th June, 1988 was restricted to only CPF beneficiaries who had retired from service prior to 1.1.1986. It is not possible to read the word "resignation" into the word "retirement". That position was thereafter

> clarified by subsequent letter of the railway Board dated 27.12.1988 communicated by a letter of 9th march 1989. It is thus clear that the CPF optees who had resigned from services, their widows would not be eligible for ex-gratia payment in terms of the O.M. dated 13th June 1988."

In that case, the Division Bench allowed the petition filed by the Union of India. In view of the decision of a Division Bench of this Court, the judgment of the Tribunal in the present case is unsustainable and will have to be quashed and set aside.

5. Counsel appearing on behalf of the Respondent has, however, urged that permission may be granted to the Respondent to move the Tribunal by remand of the present proceedings in the event that the Respondent is advised to challenge the vires of the circulars which hold the field. Counsel appearing on behalf of the Respondent fairly stated that the issues which stand concluded by the judgment of the Division Bench dated 9th July 2004 cannot be agitated again before the Tribunal on remand and that the Respondent if at all, would only question the vires of the circulars. Counsel appearing on behalf of the Petitioner states that this Court in that case should dispose of the present petition by granting liberty to the Respondent to move a fresh application before the

Tribunal. We see no reason as to why the Respondent, who is a widow should be put to the delay and expense involved in instituting fresh proceedings.

6. In the circumstances, we dispose of this petition with the following directions:

-(i) In view of the judgment of the Division Bench of this Court dated 9th July 2004 in **Union of India vs. Smt.Sumati Pandurang Padave** (Writ Petition 4113 of 2002), we quash and set aside the impugned decision of the Central Administrative Tribunal, dated 1st June 2000 in O.A. 575 of 1998;

-(ii) The proceedings shall stand remitted back to the Tribunal with a view to permitting the Respondent to file an application for amendment to challenge the vires of the relevant circulars which hold the field and, should the Respondent be advised to pursue the proceedings any further, an application for amendment shall be filed no later than eight weeks from today. In the event that such an application is filed, the Tribunal shall be at liberty to consider the application and to pass appropriate orders in accordance with law;

-(iii) In the event that the Respondent does not file an application for amendment, as aforesaid, within eight weeks, the proceedings before the Tribunal shall stand concluded in view of the setting aside of the order dated 1st June 2000.

7. The Petition shall accordingly stand disposed of. There shall be no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.